

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RUBEN CASAREZ,

Plaintiff and Appellant,

v.

IMPERIAL IRRIGATION DISTRICT,

Defendant and Respondent.

D074382

(Super. Ct. No. ECU08791)

APPEAL from a judgment of the Superior Court of Imperial County, Christopher J. Plourd and Diane Altamirano, Judges. Affirmed; request for judicial notice denied.

Ruben Casarez, in pro. per., for Plaintiff and Appellant.

Oswalt & Associates and William S. Smerdon for Defendant and Respondent.

This is the third appeal in Ruben Casarez's employment litigation against his former employer, the Imperial Irrigation District (IID). Here, Casarez appeals from an order of dismissal entered after he failed to timely file a third amended complaint.

Because Casarez has failed to carry his burden to show reversible error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The 2015 Action and Casarez I*

In 2015 Casarez, who had been employed by IID, filed a lawsuit against IID alleging racial discrimination and retaliation for his union activities, culminating in the termination of his employment (the 2015 action). (*Casarez v. Imperial Irrigation Dist.* (May 25, 2017, D070099) [nonpub. opn.] [2017 Cal.App.Unpub. Lexis 3588] (*Casarez I*)). He alleged two causes of action under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), and he also alleged emotional distress and negligent supervision causes of action.

IID demurred to the 2015 action, asserting that the two FEHA causes of action were time-barred and the entire case was barred by the res judicata effect of Casarez's dismissal with prejudice of a 2008 action he had filed against IID for alleged employment discrimination. (See *Casarez I, supra*, 2017 Cal.App.Unpub. Lexis 3588.) The trial court sustained IID's demurrer without leave to amend and entered a judgment of dismissal. (*Ibid.*)

In *Casarez I*, we held that although many of Casarez's discrimination claims were time-barred, the 2015 action alleged a timely cause of action for wrongful termination. We reversed the judgment of dismissal with directions to overrule IID's demurrer to Casarez's first and second causes of action (under the FEHA) and to sustain the demurrer to the remaining causes of action (for emotional distress and negligent supervision), but with leave to amend to allege, if possible, compliance with the Government Claims Act

and other essential elements of his emotional distress causes of action. (*Casarez I, supra*, 2017 Cal.App.Unpub. Lexis 3588.)¹

B. Trial Court Proceedings After Remand

1. Second amended complaint

After remand, Casarez filed a first amended complaint. The parties have not included that pleading in the record; however, the register of actions indicates that IID again demurred. In February 2018 Casarez filed a second amended complaint.

In the second amended complaint, Casarez abandoned the two FEHA causes of action that we had upheld against demurrer in *Casarez I*. Instead, Casarez alleged "wrongful termination in violation of public policy." The unnumbered paragraphs in his pleading contain citations to cases involving free speech, along with a rambling (and at times unintelligible) narrative of Casarez's many grievances against IID. For example, Casarez alleged:

"Any previous deeds were considered eliminated similar to RES JUDICATA, it's a reset, a clearing of your previous mistakes and you therefore are then judged according to any future events after the annual evaluation. That is how all IID employees are treated, but with Casarez in violation of his Due Process to be treated in the same manner as the other IID employees."

Casarez alleged: "IID Management Culture can at times be abusive to individual Latino's [*sic*]. Casarez is brown skin and Latino." Casarez alleged, "Though [D.D.] will

¹ During the pendency of the appeal in *Casarez I*, Casarez filed a duplicative action against IID and six individuals whom he alleged were IID directors. In *Casarez v. Imperial Irrigation Dist.* (June 6, 2018, D072698 [nonpub. opn.]) 2018 Cal.App.Unpub. Lexis 3864 (*Casarez II*), we ordered that action abated until the final determination of the instant case.

never admit it, he may have known of RES JUDICATA, and that's why he didn't care if Casarez was discriminated against. Casarez was a cooked goose, and was not a concern." Casarez also alleged that IID discriminated against him in numerous ways in 2013, despite our having held in *Casarez I* that such claims were time-barred. (*Casarez I*, *supra*, 2017 Cal.App.Unpub. Lexis 3588.)

Casarez's second amended complaint also alleged new causes of action entitled, "Breach of IBEW 465 Collective Agreement" and "Breach of the Covenant of Good Faith and Fair Dealing." Despite our directions in *Casarez I* that to survive demurrer Casarez's emotional distress causes of action had to properly allege Government Claims Act compliance, the second amended complaint contains no such allegations. (*Casarez I*, *supra*, 2017 Cal.App.Unpub. Lexis 3588.)

2. IID's Demurrer

IID demurred to the second amended complaint, moved to strike certain allegations, and filed a request for judicial notice. Casarez responded by criticizing IID's lawyers, asserting they "burden the [j]udges with nonsense and idiotic innuendos" and mischaracterizing the holding in *Casarez I* by stating that this court "agreed there had been a continuous attack against Casarez for many years."²

² We did no such thing. The facts stated in *Casarez I* must be read in light of the applicable standard of review on demurrer, which required that we *assume* Casarez's allegations were true. We pointed this out to Casarez a year ago in *Casarez II*, *supra*, 2018 Cal.App.Unpub. Lexis 3864, but he persists in mischaracterizing the analysis and holding in *Casarez I*.

In its reply, IID stated, "This was [Casarez's] second chance to amend his complaint, and in spite of a clear road map provided by the Court of Appeal as to how the plaintiff might be able to amend his complaint to state a cause of action against IID, plaintiff has not only failed to cure the defects in his original complaint, each of his attempts to amend have made his pleading worse."

On May 2, 2018, the court conducted a hearing in which IID's counsel and Casarez, who remained self-represented, appeared. The court granted IID's unopposed request for judicial notice. The court stated that Casarez's complaint was "unintelligible and uncertain" and on this ground sustained the demurrer to the second amended complaint in its entirety. The court gave Casarez "one last opportunity to file an amended complaint" and ordered that his "third amended complaint must be on file within 30 days of the hearing held on May 2, 2018"—i.e., June 1, 2018.

3. Order dismissing the action

On June 4, 2018, IID brought an ex parte motion to dismiss the case based on Casarez's failure to file a third amended complaint. Casarez did not appear at the hearing two days later, *nor did he file any opposition*.

The court determined that Casarez did not file an amended complaint within the time allowed by the court's order sustaining the demurrer and, therefore, ordered the case dismissed. The same day (June 6, 2018), the superior court clerk received in the mail from Casarez a "4th Amended Pleading." The clerk notified Casarez that the document was rejected because it was "received by our office on June 6, 2018, which is clearly

beyond the 30-day filing limit" specified in the order sustaining IID's demurrer, and "[t]his action was dismissed on June 6, 2018"

4. *"Motion to reinstate"*

On June 18, 2018, Casarez filed a "Motion to Reinstate." He asked the court to "disregard" IID's motion to dismiss because he (1) e-mailed the amended complaint to IID's counsel on June 1, 2018; (2) mailed the third amended complaint to the court on June 1; (3) is now living in North Dakota and "the mail is very slow"; (4) has a new job and is "running for IID [board of directors]"; (5) "wasn't paying attention to IID's trickeries, and felt everything was proper;" and (6) has only worked 20 hours in the first week of June, while IID's counsel "is receiving thousands of dollars from IID."

In opposition, IID's attorney stated that Casarez never requested an extension of time to file his amended complaint beyond the 30 days specified in the court order. Counsel also noted that Casarez's motion was not supported by any legal authority or admissible evidence. Additionally, IID's counsel stated that he has "repeatedly informed [Casarez] that he will not accept service of pleadings via email" and denied any "trickery," stating:

"First of all, IID did not engage in any trickery. . . . IID provided plaintiff the notice required for [the ex parte motion to dismiss] via email as demanded by plaintiff. Plaintiff did not respond to that notice and did not make any attempt to appear at the hearing. Further, plaintiff did not contact IID's attorney via email, telephone, or otherwise and request that the hearing be postponed.

"Plaintiff argues that he has only worked 20 hours the first week of June The response to that argument is that by the first week of June, the pleading was already due, so the amount of time plaintiff was working is completely irrelevant. [¶] . . .

"There is literally nothing contained in plaintiff's moving papers to suggest his failure to comply with this [c]ourt's order and file his papers on time was due to mistake, inadvertence, surprise or excusable neglect."

On June 21, 2018, after conducting a hearing in which Casarez appeared by telephone, the court denied Casarez's motion to reinstate the case "without prejudice." Six days later, Casarez filed a notice of appeal.

DISCUSSION

Code of Civil Procedure³ section 581, subdivision (f)(2) (hereafter section 581(f)(2)) provides that, with an exception not relevant here, the court "may dismiss the complaint" when "after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal." California Rules of Court,⁴ rule 3.1320(h) provides: "A motion to dismiss the entire action and for entry of judgment after expiration of the time to amend following the sustaining of a demurrer may be made by ex parte application to the court"

Dismissing an action under section 581(f)(2) is reviewed for abuse of discretion. (*Gitmed v. General Motors Corp.* (1994) 26 Cal.App.4th 824, 827.) Discretion is abused only when the trial court ""exceed[ed] the bounds of reason, all of the circumstances

³ Undesignated statutory references are to the Code of Civil Procedure.

⁴ Citations to rules are to the California Rules of Court.

before it being considered.'"" (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1282.)

An appellant is bound by many rules of appellate procedure designed to facilitate our review of claims of reversible error. Most pertinent here, an appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Rule 8.204(a)(1)(c).) "It is axiomatic that an appellant must support all statements of fact in his briefs with citations to the record [citation] and must confine his statement 'to matters in the record on appeal.'" (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29.) In *Casarez I*, we informed Casarez that we would disregard asserted "facts" in his brief that were not supported by the record. (*Casarez I, supra*, 2017 Cal.App.Unpub. Lexis 3588.)

As appellant, it is also Casarez's responsibility "to support claims of error with citation and authority; this court is not obligated to perform that function on [his] behalf." (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 599.) "Matters not properly raised or that are lacking in adequate legal discussion will be deemed forfeited." (*Id.* at p. 600.) "In other words, it is not this court's role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness. Rather, an appellant is required to present a cognizable legal argument in support of reversal of the judgment. 'When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary.'" (*Ibid.*) Issues that are not raised or supported by argument and citation to legal authority are forfeited. (*Ibid.*) Moreover, challenges to a trial court

judgment or order not raised in the opening brief are waived. (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685.)⁵

Casarez's briefs violate all of these rules. In the opening brief, his five-page single-spaced "Background" section has no citations to the record. His primary argument, that the "Imperial Superior Court was harsh and capricious," also contains not a single record citation, and cites only one legal authority, section 1013, subdivisions (a) and (g)—which is inapt because Casarez's third amended complaint is deemed filed not when mailed to the court, but when deposited with the clerk.⁶ (*Rojas v. Cutsforth* (1998) 67 Cal.App.4th 774, 778.)

⁵ We advised Casarez of these same forfeiture rules a year ago in *Casarez II, supra*, 2018 Cal.App.Unpub. Lexis 3864.

⁶ Section 1013, subdivision (a) provides: "In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court."

Section 1013, subdivision (g) provides: Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court."

Without any citation to the record, Casarez asserts that he e-mailed the third amended complaint to IID's lawyer on June 1, 2018. However, even assuming without deciding that e-mail service on IID's lawyer was effective,⁷ that does not explain why Casarez failed to timely file the third amended complaint. Casarez argues that the court abused its discretion because Casarez "works in North Dakota," and the court "should not frown on those who work out of state." Again without citation to the record or any legal authority, he blames the court for his tardy filing, stating that he "should not be held in contempt for the failure of the Imperial Superior Court to accept electronic delivery, whether by fax or email." However, Casarez makes no showing that he even attempted electronic or fax filing, or that the court improperly rejected such a filing.⁸

Again without any factual support or citation to the record, Casarez also contends that the judge who denied his motion for reconsideration "is good friends with one of the defendants" and the judge who entered the dismissal "should have recused herself" because she is married to a former IID director. We decline to review these contentions because there is nothing in the record on appeal to support them.

The remaining arguments in Casarez's opening brief do not pertain to the propriety of the court's dismissal of the action, but instead relate to the asserted merits of his claims and are entitled "IID Has Intentionally Violated the Plaintiff's Civil and Union Rights,"

⁷ IID's attorney has repeatedly asserted that he did not consent to e-mail service and that such service is, therefore, ineffective.

⁸ IID concedes that the Imperial County Superior Court "does not offer electronic or fax filing" but also adds, "With that said there are numerous attorneys' services that will accept a fax or emailed document and bring it to the court for filing for a modest fee."

"Res Judicata," "Waiver of rights and claims under the ADEA [Age Discrimination in Employment Act]," "Discovery," and "Change of Court Venue CCP [Code of Civil Procedure section] 397." He contends that IID "intentionally violated" his "civil and union rights," has engaged in discovery abuses, and that venue should be changed because of the "political influence of IID." However, the issues on appeal—whether the court properly dismissed the action for Casarez's failure to timely file a third amended complaint—have nothing to do with any of these claimed grievances. Moreover, the trial court's ruling denying Casarez's motion to change venue was reviewable only by a writ petition, not by appeal. (*Chango Coffee, Inc. v. Applied Underwriters, Inc.* (2017) 11 Cal.App.5th 1247, 1249, fn. 2.)

Casarez's reply brief does not cure any of these deficiencies. The three-page single-spaced "Background" section contains not one citation to the record. His first argument is entitled "The Plaintiff Had a Constitutional Right to Publish His Article on IID in the Imperial Valley Press." His second argument, entitled "Due Process," and his third argument, entitled "Discrimination," each contain no legal analysis, but are instead a list of his grievances against IID. Casarez's remaining reply brief arguments are also devoid of relevant legal analysis and reasoning.

We understand that Casarez is self-represented. However, self-represented litigants are treated the same as attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."]; *Kobayashi v. Superior Court* (2009) 175

Cal.App.4th 536, 543 ["Pro. per. litigants are held to the same standards as attorneys."].)

Accordingly, as a self-represented litigant, Casarez must follow the rules of appellate procedure and present intelligible argument supported by the record and applicable legal authority. His failure to do so affects his appeal in two ways. First, we deem forfeited any matter he has failed to adequately support with record citations—which under the circumstances here are *all* his factual statements and legal arguments. (*Lonely Maiden Productions, LLC v. Golden Tree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384 ["Tacitly, we are invited to comb through the record in search of error. We decline."].)

Moreover, even if we overlooked forfeiture, Casarez still bears the burden to show reversible error. However, in the absence of any cogent legal argument based on specific record citations, we must presume that the trial court's orders are correct. As such, Casarez has not carried his burden of showing reversible error. We are, therefore, compelled to affirm the judgment.⁹

⁹ IID's unopposed request for judicial notice pertaining to judicial bias claims in Casarez's brief is denied. (*San Diego City Firefighters, Local 145 v. Board of Administration etc.* (2012) 206 Cal.App.4th 594, 600, fn. 3 [judicial notice denied because "the document at issue is not necessary to our resolution of this appeal"].)

DISPOSITION

The judgment is affirmed. Each party to bear its own costs.¹⁰

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

DATO, J.

¹⁰ At oral argument, in response to a question by the court about awarding costs on appeal, IID's lawyer stated IID waives costs on appeal.